IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4467 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHARATBHAI HARIBHAI RAWAL

Versus

JYOTSANABEN D/O BABUBHAI

Appearance:

MR ATUL G BAROT for Petitioner

MR ASHISH H SHAH for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 15/01/2001

ORAL JUDGEMENT

This is an appeal under section 28 of the Hindu Marriage Act, 1955 against the judgment and decree dated 21.4.1997 recorded by the learned Second Extra Assistant Judge, Ahmedabad (Rural) at Mirzapur in Hindu Marriage Petition No.7/95, whereby the learned Judge was pleased to dismiss the said petition of the present appellant filed under section 13(1)(a) and under section 13(1)(b)

of the Hindu Marriage Act, 1955 (for short 'the Act') for getting divorce against the present respondent on the grounds of cruelty and desertion.

2. The appeal was admitted on 4.10.2000 by this court. The respondent was served and Mr Ashish H Shah, learned Advocate appears on behalf of the respondent.

I have heard the learned Advocates for the parties and have perused the papers. At the commencement of argument, a preliminary objection was raised about maintainability of the appeal.

3. It is clear that the Hindu Marriage Petition filed by the present appellant was dismissed by the learned Second Extra Assistant, Ahmedabad (Rural), Mirzapur. The question is whether the appeal lies to the District Court or to the High Court. For the said purpose, it is required to consider the provisions made in section 16 of the Bombay Civil Courts Act, 1869 read with section 28 of the said Act.

4. So far as section 28 of the said Act is concerned, it is positively made clear therein that all decrees made by the court in any proceedings under the Act shall, subject to the provisions of sub-section (3), be appealable as decrees of the court made, in exercise of the original civil jurisdiction of the appellate court.

5. Therefore, we will have to turn the provisions made in Section 16 of the Bombay Civil Court Act, 1869. The relevant provisions of section 16 may be reproduced as under:

> "Where the Assistant Judge's decrees and orders in such cases are appealable, the appeal shall lie to the District Judge or to the High Court according as the amount or value of the subject matter does not exceed or exceeds fifty thousand rupees."

In other words, if the valuation of the subject matter exceeds the amount of Rs.50,000/-, the appeal may lie to the High Court. If the valuation of the subject matter does not exceed the amount of Rs.50,000/-, the appeal will lie to the District Court. This is naturally the provision for appeal against the decree and order passed by an Assistant Judge.

6. In the present matter, the judgment and decree have been passed by the learned Second Extra Assistant Judge. Therefore, it is a judgment and decree of an Assistant Judge, within the meaning of section 16 of the Bombay Civil Courts Act, 1869. Therefore, if we read the provisions of section 16 of the Bombay Civil Courts Act with section 28 of the said Act, then the combined reading of these two provisions makes it clear that the appeal against the judgment and decree of the learned Assistant Judge will lie to the District Court, provided, valuation of the subject matter does not exceed the amount of Rs.50,000/-. In the present case, the valuation of the subject matter for court fees is shown as Rs.37/50. Even in this appeal, the court fees have been paid in a sum of Rs.37/50. The petition does not show any other claim therein. Therefore, the relief has been confined to the provisions made in section 13 of the said Act. This would necessarily mean that the valuation of the subject matter in the aforesaid petition of the appellant before the District Court did not and does not exceed the amount of Rs.50,000/-. Even for the purpose of this appeal, the valuation of the subject matter does not exceed the amount of Rs.50,000/-.

7. It is, therefore, clear that the valuation of the petition before the trial court as well as before this court does not exceed Rs.50,000/-. In that view of the matter, in my opinion, the appeal will lie to the District Court and not to this Court.

8. In this regard, I am fortified by the decision of this court recorded in the case of Ramjibhai Lalbhai Patel v. Shantaben M Jashkanbhai (1984 GLH 986). There it has been observed as follows:

> "The original petition is decided by the extra Assistant Judge, Ahmedabad (Rural) at Narol. Now, Section 16 of the Bombay Civil Courts Act, 1869 provides that where the Assistant Judge's decree and orders in such cases are appealable, the appeal shall lie to the District Judge or to the High Court according as the amount or value of the subject-matter does not exceed or exceeds twenty thousand rupees. Since the appellant did not put his valuation in the petition for the purpose of jurisdiction, this court is bound to follow the effect of the judgment of the Division Bench in Chhagan Karsan's case reported in 13 GLR 835."

In view of the above decision, again it is clear that the

appeal against the judgment and decree of the Assistant Judge would lie to the District Court and not to this court, when the valuation of the subject-mater does not exceed the amount of Rs.50,000/-. In that view of the matter, this appeal would clearly lie before the District Court and not before this court and, therefore, it is not open for this court to entertain this mater.

9. In that event, the only alternative left to this court is to direct the office to return the memo of the appeal back to the appellant for presentment before the court of competent jurisdiction.

10. Therefore, the office is directed to return the memo of appeal back to the appellant for presentment of the same before the court of competent jurisdiction i.e. the District Court at Ahmedabad (Rural) at Mirzapur. The parties present in the court are directed to remain present before the said court on 6.2.2001 for proceeding further in the said appeal, which may be filed by the appellant in that court in accordance with law. If the memo of appeal is presented to that court by the present appellant, then the District Court shall dispose of the same in accordance with law. The appeal stands disposed of accordingly with no order as to costs.

15.1.2001 [D P Buch, J.]
msp